A STUDY OF THE LAND TENURES

IN THE MADRAS PRESIDENCY

WITH PARTICULAR REFERENCE TO THE GOVERNMENT QUESTIONNAIRE

BY

NAVULURI SATYANARAYANA, B.A. B.L.

ADVOCATE, ONGOLE.

"Judge not, that ye be not judged. For with what judgment ye judge, ye shall be judged; and with what measure ye mete, it shall be measured to you again. And why be holdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye? Or how wilt thou say to thy brother, Let me pull out the mote out of thine eye; and behold, a beam is in thtne own eye? Thou...first cast out the beam out of thine own eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye."

St. MATTHEW'S.

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FOREWORD

The author has attempted to collect in a short compass the data for coming to a decision on the question of reform of the two important land tenures in this Presidency (viz) the Ryotwari tenure and the Zamindari system. I have no doubt that the discerning Public will appreciate the usefulness of the endeavour.

P. SATYANARAYANA RAO, M.L.
Advocate,
High Court & Federal Court
Madras. 7-12-46

P. SATYANARAYANA RAO.

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PREFACE

The aim and object of this book-let is to present the case of the Ryotwari Pattadars who are no other than the Peasant proprietors of the soil including their successors in interest. It is submitted for the earnest consideration of the Popular Ministry at the helm of affairs in our Province. It is also hoped that the intellegentia will judge the cause it upholds.

In order to appreciate the Ryotwari Tenancy, in its proper setting, some connected materials have also been presented together with an historical back-ground in Chapter I. In Chapter II, and III, I have dealt with the Zamindari and Ryotwari Tenures respectively. In Chapter IV, the Government Questionnaire has been answered as best as I could, with a few points against the proposed legislation.

The conclusion which I wish to bring home is that it is neither just nor equitable and lawful to interfere with the immemorial rights and interests of the private owners in respect of their landed properties. It is also apprehended that any attempt on the part of the Legislature will only serve to create an unbridgeable gulf between the otherwise amicable parties. It could be seen that even the publication of the Questionnaire had caused considerable commotion among the cultivating classes in the shape of wide spread agitations and conferences only to seize the opportunity to usurp the rights of the Peasant-Pattadar.

The subject matter being controversial in nature. I preferred to use the verbatim quotations to secure an impression of authority. The book being a compilation work, I claim no originality in regard to most of the materials presented. I only crave the indulgence of the readers for any sins of omission or commission as may appear in the book considering the various limitations under which it has been brought out. My heartfelt thanks are due to the learned author, Mr. Soundararaja Iyyengar from whose book entitled "Land Tenures etc." much material has been taken and presented.

ONGOLE
6-12-46

NAVULURI SATYANARAYANA,
Author,

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A Study of The Land Tenures In The Madras Presidency With Particular Reference To the Govt., Questionnaire.

CHAPTER I

INTRODUCTION

The publication of the Government Questionnaire in the News Papers[1] has given occasion to many readers to understand that the present Govt., contemplates to introduce legislation perhaps similar to the Madras Estates Land Act, 1908 applicable to the Ryotwari and other lands all over the Presidency. Since the contemplated legislation undoubtedly affects the rights and interests of the land-holders generally, it becomes imperative for them to place their case before the Government for their earnest consideration. I propose to present below certain materials which if viewed impartially, will enable one to see whether the Government should undertake such a legislation at all which is plainly confiscatory in nature, scope and extent.

It is admitted on all hands that the subject of Land Tenures is beset with many technicalities and complications that very often problems will arise which are too difficult for solution. Certain terms frequently arise in the discussion of land tenures, for instance, the words Owner, Possession. Tenant and Tenancy, which have to be carefully understood. Their plain meanings[2] are given below. It appears that the term 'Tenure' is not strictly applicable to Indian land

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[1] Published in Indian Express on 18-9-46.

[2] Webster's Dictionary—Owner is one who owns; one who has the legal or rightful title whether he is the possessor or not. Possession—may be either actual or constructive; actual when a party has the immediate occupancy; Constructive when he has only right to immediate occupancy. A Tenant is one who has the occupation or temporary possession of lands and tenaments whose title is in another. Tenancy is the temporary possession of what belongs to another.

holdings. Mr. Soundararaja Iyyengar, in his Land Tenures says that it is essentially a feudal term applicable to a system of holding land in sub-ordination to another which in the fedual age, constituted the leading characteristic of real property. It is beyond doubt that feudalism as was prevalent in Europe, never obtained in India. According to the learned author "Indian institutions resembled more the benefices which proceeded, than the fiefs which constituted, it." But, nevertheless the term tenure has generally been made use of by Indian writers "to denote comprehencively the rights and interests in and relating to land, and the relations with respect thereto between the persons entitled to those rights and privileges."[1]

Even from primitive times, man has considered land as an important species of property and has jealously gaurded it from others. History of Land,[2] the world over, and how the institution of private ownership came into being are

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[1] Land Tenures in Madrs Presidency by Soundararaja Iyyengar.

[2] Mr. Soundaraja Iyyengar gives a vivid account in his Land Tenures in pages 1 to 3 about the History of Land. A summary is as follows:—History of land commences with the division of men into tribes and the division into tribes involves division of territory. Each tribe jealously gaurded its own territory from intrusion by others. In the earliest hunting stage, man lived by chase never thinking of appropriating soil or laying any claims to it, except regarding the meeting ground as common property against competitors. Nomadic or Pastoral stage is reached when Kumri cultivation was resorted to by the Hill tribes moving from place to place in search of fresh pastures. Their agricultural labours consisted in growing cereals on the virgin soil with rich returns for one sowing and reaping. Idea of ownership constituted in the right to occupy and cultivate a particular spot as long as he likes. This temporary cultivation was the first species of property in land. As the tribe became large, nomadic life became defficult. The next third stage is reached, when they resorted to settled agriculture in fixed habitations called villages. Formation of family and its existance from the Clan gave rise to a taste for property. The 4 stage is reached in which community of possession was limited to pasture lands and arable lands being held in permanance by families. The last stage consists in the development of individual holdings from the common property of the family.

interesting matters for investigation. We can fairly say that with certain exceptions, the History of Land followed one unvarying course. Commencing from community of tribal possession, land has been by degrees appropriated to the village, the family and the individual. But authors seem to think that this principle has no application to India where land was considered communal property. Agriculture developed from pastoral husbandry. Whether it is tribal or communal, it does not make much difference in so far as it is not individual. Thus, in the words of a well known author [1] "there seems to be hardly anything uncertain in the domain of archaic law than the theory that the soil was originally owned by groups and not by individuals, and that its individual appropriation is the result of a slow process of development." Again, it appears that there are five clearly marked stages in the history of individual ownership in the soil. They are 1. The earliest Hunting stage, 2. The Nomadic or Pastoral Stage, 3. The Stage in which men settled down in villages for agricultural purposes. The 4th stage is that in which there seems to exist family ownership of arable land and community possession with regard to pasture land. And the last 5th stage saw the development of individual property from that of family, "when a clear property in land originating in occupation and continued possession is created." Here, we have to note that certain writers seem to favour the idea that only by virtue of Natural Law of occupancy ownership came into being. But, this theory of occupancy on the basis of Natural law has been strongly criticised by the eminent author and jurist Sir Henry Maine who says that "the said theory presupposes that man in a state of nature was actuated by the same motives as a man of to day living in an advanced state of civilisation to respect another man's property, whereas, on the contrary his right to possession

[1] From 'the Growth of Manor' by Prof, Vinogradoff.

depended upon his power to keep it",[1] Thus it seems to be correct to suppose that in the primitive times might was right and ownership rested upon physical possession and capacity to retain it.

History tells us that "among the Vedic Aryans in India" agriculture was an important part of their economy. Bulls were used to draw the plough......The art of irrigation was known at this time."[2] Again, it was said of them thus:- The people were in the main agriculturists and cattle and pasture fields constituted their chief wealth. They knew how to work metals."

Geographical and ethnological causes, local conditions and different political influences have, in no small measure, contributed to the formation of infinite varieties of tenures. Elephinstone, in his History of India gives us a valuable caution against common errors. He says that "disputes about property in the soil are due to applying to all parts of the country facts which are true of only particular tracts and applying conclusions from one set of tenures, to tenures totally dis-similar in their nature."[3]

We have to admit that there is no reliable data about the purely vernacular institutions in our province unaffected by Hindu or Aryan influence. Therefore, authors freely indulged in assumptions and theories made on a priori reasoning. It is evident that the indigenous institutions (Tenures) in India must have been effected by the Hindu or Aryan influences, then by the Mohmedan influence and finally by the British influence with their regular and systematic policies. But we have to see that the South Indian land tenures are not so much affected, at any rate, by the latter two influences as to completely change their

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[1] Ancient Law by Sir Henry Maine.

[2] Indian History Hindu Period, by Jagannatha Gangopathyay P.11.

[3] Elphinstone's History of India.

nature and structure. On the other hand, they are generally left in tact inspite of so many forces at work.

There seems to be no doubt that in the primitive times man lived in small groups and perhaps, in the midst of dangerous surroundings and not infrequently exposed to hostile and warlike tribes. Hence, there arises a supreme necessity for the existence of tribal chief by whatever name he may have been called, under whose protection and leadership the entire clan or tribe lived and rendered homage to him. Lateron, perhaps, the institution of kingship arose as kingdoms came to be established and still later, empires founded. The History of the land tells us that from the earliest times political institutions and codes of laws like that of Manu existed and were administered with regard to property disputes and personal feuds between man and man. It also tells us that our kings and emperors hindu and moslim alike followed regular policies regarding taxation on lands owned by individuals and institutions. I propose to give below certain passages from history to show how agriculture developed from primitive times and the policies of our ancient rulers together with the illuminating accounts left by foreign travellers like Magesthanes, Fahien and Hiuentsang.[1]

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[1] Extracts from Indian History, by an Indian Author, name not available. Pre-Aryan Period :—They are semi-savage tribes. The Santals of Lower Bengal. They had a patriarchal Government. They had a crude system of agriculture. The more advanced tribes are the Tibeto Burmans occupying the Himalayan range. The Kolerians settled along the North East of the three sides of the table land which covers the southern half of India. They are more advanced. " Thus we find that the people of the pre-Aryan period were civilised in varying degrees and if we add to these the Aryan and Semitic conquerors, we fully realise that India froms a museum of many races of varying degrees of barbarism and civilisation." Pages 9 and 10.

Aryan Conquest of India :—3,000-1,400 B. C. " The first of their settlements between the river Saraswathi and Drishdwathi was named Brahmarishi desa...Their civilisation during this period, has

Historians pay an unqualified tribute to the Emperor Akbar who ruled over India from 1556 to 1605 A. D. for the many sided development and prosperity of the country. "Akbar's reign was distinguished by the improvement of the internal administration no less than by its unbroken series of victories." "Todar Mall was Akbar's great Finance Minister. Land survey was carried out. Assessment on cultivated lands was revised. 1/3 of the gross produce was taken by the state. Similar encomiums were showered upon Great Emperor Sivajee who ruled over his territory from 1646 to 1662 A. D. The country proper of the Maharattas was called Swarajyya as opposed to Moglai territory over which he claimed suzerainty. From the latter he collected yearly payment leaving the administration in the hands of the local rulers. In the Swarajyya, he did not follow the Moglai plan. Collections were made by the revenue officials for the Government directly and were remitted to the state together with accounts.

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been faithfully preserved in the Rigveda...Offered sacrifices to propitiate the elements of Nature *Viz.* Indra, Vayu, Varuna *Etc.* on whose favour their material prosperity depended. The people were in the main agriculturists and cattle and pasture fields constituted their chief wealth. They knew how to work metals... The political organisation of the Aryans, during this period was modelled on tribal basis. The family was the unit and a number of these formed the sub-clan or a Gothra. The tract they occupied was known as Grama and its head the Gramani. Page 13 and 14.

Magasthenes's Account of India :—Taxation - All agricultural land was regarded as crown property. (He means that Sovereign was the owner of the soil), and the right of the Government to levy rent amounting to a considerable part of either the gross produce or its cash value was well established. The normal share of the produce taken was ¼. Periodical assessments were made and certain other unspecified dues were also levied. Page 28. Irrigation was always looked upon as a matter of prime importance in India. Chandra Guptha maintained a special irrigation department charged with the duty of measuring land and regulating sluices without partiality. Page 28. **Chanakya's Arthasasthra** :—Finance was to be paid special attention to while the Superintendent of agriculture was required to assess lands at rates varying according to methods of irrigation

Proceeding further, we have to note that during the declining stage of the Mughal rule the British traders came to India about 1608 under the name of East India Company. Starting as traders, they soon developed themselves into a mighty ruling power with certain territories beyond their settlements. A brilliant summing up is given by a learned author in the following words—"The History of the English in India may be summed up in four words. They came to India to trade; to trade in safety, they had to conquer; Having conquered, they began to rule; having begun to rule, they could only rule according to principles of Government recognised by them and through the proper agents the Crown and Parliment." The East India Company, after establishing themselves strongly on the soil of Bengal, as also elsewhere, (Madras), proceeded to acquire the Grant of the Dewany [1] from the titular Mughal Emperor Shah Alum in 1765 which was of course readily accorded to them by which the reality or semblance of legitimate authority had been acquired over the provinces of Bengal, Bihar and Orissa. In the beginning, the work of administration as also that of collection of

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used. The normal share of the produce taken by the state was ¼.—Page 31. **Fahien's Account of India**:—Revenue was mainly derived from the crown land (he means all state lands), and royal officers being provided with fixed salaries, had no occasion to live upon the people. Cowry shells formed ordinary currency. Page 66. **Hiuen Tsang's Account**:—Civil Administration of Harsha - It was founded on benign principles. Principal source of revenue was the rent on crown lands, amounting in theory to ⅙ of the produce... Resources of his empire in the South.—The chief source of his income was the land revenue. The Government took ⅙ of the gross out turn. But generally several cesses were levied in addition. The lands were measured, carefully surveyed and holdings registered... Royal dues were taken either in kind or gold or in both. In seasons of drought or floods remissions of revenue were made. Additional taxes were divided into Internal 'Antareya' or external 'Bahya' 105.

[1] Reproduced from Herbert Cowell's 'Courts & Legislative Authorities In Br. India' P. 22. *From Aitchison's treaties* (INDIA).

revenues had been mostly done through the native agency supervised by the British officers. Lateron, the Court of Directors wanted that the East India Company should 'stand forth' as Dewany. Therefore, gradually, the entir work was taken over by the English officers.

It was during the time of Lord Cornwallis from 1789 to '93 that Permanent Settlement was first introduced in Bengal after previous authorisation of the Court of Directors in England. It is interesting to note that before introduction of the Permanent Settlement in Bengal, there was an Act of Parliament Statute XXIV, Geo. III, C, 25, in 1784 Sc. 39 of which reads thus "The East India Company was commanded to institute an enquiry into the complaints that had privailed that diverse rajas, Zamindars, and other landholders within the British territories in India have been unjustly deprived of or compelled to relinquish and abandon their respective lands" and "to give orders for settling and establishing upon principals of moderation and justice according to the laws and constitution of India, and to establish permanent rules by which, the tributes, rents, services of the rajas, Zamindars, Poligars, talukdars and other native holders should be in future rendered and paid

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60. The Firmaund granted by Emperor SHAH ALUM, to the E. I. Co. in 1765. It runs thus:—

"At this happy time, our royal Firmaund, indispensably requiring obedience, is issued; that, whereas, in consideration of the attachment and services of the high and mighty, the noblest of the exalted nobles, the chief of the illustrious warriors, our faithful servants and sincere well wishers, worthy of our royal favours, the English Company, we have granted them the Dewany of the provinces of Bengal, Bihar and Orissa, from the beginning of the fussel rubby of the Bengal year 1172, as a free gift and ultumgan, without the association of any other person, and with an exemption of the payment of customs of the Dewany, which used to be paid by the court. It is requisite that the said company engage to be security for the sum of 26 lakhs of rupees a year for our royal revenue, which sum has been appointed from the Nabob Nudjum-ul-Doula Bahdur, and regularly remit the same to the royal Circar; and

to the United Company." In pursuance of such command, the Directors authorised Lord Cornwallis to conclude Permanent settlement in Bengal. And accordingly it was concluded in Bengal. It was also introduced in the Madras Presidency. Meanwhile, the Court of Directors found out the defects and imperfections of the Permanent Settlement and its further extension was stopped in Madras. Instead, a periodical settlement was preferred under which the Govt. came directly into contact with the cultivating ryot. In the words of the learned author, "The court of Directors had learnt the imperfections of the judicial and revenue systems of Bengal. In making revenue settlements, before a final decision was reached, information about the nature of the land tenures was carefully collected. A periodical was preferred to a permanent settlement and the ryotwari was more generally adopted than the Zamindari."

In the Madras Presidency, we have certain types of land tenure Viz. 1. The Zamindari Tenure, 2. The Ryotwari Tenure, 3. The Mirasi Tenure, and 4. The Malabar land Tenure. Of these, I propose to deal with the first two only. By tenure, we mean simply the system of

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in this case, as the said Company are obliged to keep up a large army for the protection of the provinces of Bengal etc. We have granted to them what so ever may remain out of the revenues of the said provinces, after remitting the sum of 26 lakhs of rupees to the royal Circar and providing for the expenses of Nizamut, it is requisite that our royal descendants, the Waziers the bestowers of dignity, the Omrahs high in rank, the Mutsaadees of the Dewany, the manager of the Sultanut, the Jagirdars and Crories, as well the future as the present using their constant endeavours for the establishment of this our royal command, leave the said office in possession of the said company, from generation to generation for ever and ever. Looking upon them to be assured from dismissal or removal, they must, on no account whatsoever, give them any interruption, and they must regard them as excused and exempted from the payment of all the customs of the Dewany and royal demands. Knowing our orders on the subject to be most strict and positive, let them not diviate therefrom. Written the 24th of Sophar, of the 6th year of the Jaloos, the 12th of August, 1765.

holding land. Of the various types of tenure referred to above, the Zamindari system is perhaps the widest and covers a large tract of land in the province as also elsewhere. Without understanding what it is and how it is working, we may not be able to appreciate the Ryotwari and allied tenures. Hence, a brief sketch is attempted here.

CHAPTER II

ZAMINDARI TENUR.

The Jamindari System :—The authors of the Fifth Report traced the origin of the word 'Zamindar' to the times of the Hindu Rajas. They say that it went by the name 'Chaudry' which was changed in to 'Krory' during the Mohmedan rule. Lateron, it was substituted by the word 'Zamindar'. As noted above, with the introduction of the Permanent Settlement, their position and privileges became also established. It may not be profitable for us to trace what they were before 1802, for undoubtedly, there may have been many descendants of the ancient ruling families as also a number of rent collectors. But after the crusial period, their position was recognised and maintained.

Under the Zamindari System, we have various zamindaries in southern India, such as, Venkatagiri, Vizianagram, Bobbili, Mirjapur, Pitapur, Challapalli, Kalahasty, Karvetnagar and a host of others differing in size and importance. In each zamindari, the Zamindar or proprietor is the principal factor to be reckoned. Under him, we find a number of tenant-pattadars and sub-tenants holding lands either immediately or otherwise. These species of land owning class pay rent or sisth to the Zamindar in cash or kind periodically for the use and occupation of the land. The modern name for the Zamindari

is "Estate"[1] a technical term to denote a certain type of land having certain legal characteristics.

Ryoti-land[2] means all cultivable land excluding 1. private land, 2. communal lands, 3. service tenures, and 4. tank-beds. Over the ryoti land, the occupying tenant, has got occupancy rights[3] or as they are called 'Kudivaram'

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[1] Madras Estates Land Act, 1908, Section 3. (2). Estate means.

(*a*) Any permanently settled estate or temporarily settled Zamindari;

(*b*) any portion of such permanently settled estate or temporarily settled Zamindari ;...............

(*c*) any unsettled Palaiyam or Jagir;

(*d*) any Inam village of which the grant has been made, confirmed or recognised by the Br. Govt. not withstanding that the village has been partitioned among the grantees or their successors in title of the grantee or grantees;

Explanation :—**1** Where a grant as an inam is expressed of a named village, the area which forms the subject matter of the grant, shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service tenure or been reserved for communal purposes or the like. (Amendment of 1944)

2 Where an inam village is resumed by the Govt. it shall be an estate; but if any village so resumed is subsequently regranted by the Govt. as an inam, it shall, be regarded as an estate.

3 Where a portion of an inam village is resumed by the Govt. such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently regranted by the Govt. as an inam, such portion or part, shall, from the date of such regrant, be regarded as forming part of the inam village for the purposes of this sub-clause;

(*e*) Any portion consisting of one or more villages of any of the estates specified in the clauses, *a*, *b*, and *c* which is held on a permanent under tenure,

[2] M.E.L. Act, Sc. 3, (16) - deals with Ryoti land.

[3] The term occupancy rights; See Sc. 6-II¾A.

rights.[1] The occupying tenant pays the zamindar sisth or rent[2] for the use and occupation of the land in token of the proprietory interests of the latter. We may also note that the zamindars pay in their turn 'Peiskush' which means a fixed money payment to the Government in token of its suzerainty or paramountcy. These peishkushs were fixed permanently at the time of the permanent settlement. The Govt. also granted them Sannads containing the terms and stipulations which are to govern the relalions between the zamindar and the Govt. From the total collections made by the zamindar, he pays the peishkush amount and keeps the surplus amount for himself. He maintains his official establishment for the collection and administrative works in the villages as also at his headquarters, such as the Karnam, the village munsiff, the Revenue Inspector, the Thahasildar etc. The Zamindar rarely exercises the functions of Judiciary, civil or criminal. He utilises the machinery of the adjoining British territory. Nor does he maintain any police or military force.

The law of succession applicable to the Zamindary is the law of primogeniture which means that the first born son or his son (if the former pre-deceases) shall succeed to the estate to the exclusion of others. The other blood relations, however close they may have been to the deceased, are only entitled to maintenance and not to partition the

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[1] The term 'Kudivaram' is a tamil word which has no equivalent in telugu and is not defind in the Act. It means literally, the cultivator's share in the produce of land as distinguished from 'melvaram' the share which the landlord receives as rent. I. L. R. 41 Mad. 1012, at P. 1014.

[2] The Term sisth corresponds to rent which is defined in Sc. 3-(11). Rent includes 1. money payment or payment in kind, for the use or occupation of the ryoti land and includes, 2. water cess, 3. any local tax, 4. Pasturage fees, and 5. Fishery rents.

Note :—Occupancy rights are permanent, heritable and transferable rights in favour of the cultivating ryots over their holdings.

estate properties. Nor claim a share in the collections from the estate by virtue of kinship or consanguinity. They are simply entitled to maintenance the estate being strictly impartible and non-divisable. Such of the Estates as are enumerated in the Schedule I annexed to the Madras Impartible Estates Act II of 1904 are strictly governed by the said Act in regard to matters of succession maintenance of the members of the Proprietor's family and his powers of alienation in respect of the estate Properties.

The Provincial Legislatures enacted certain Acts such as the Bengal Tenancy Act, the Bombay Tenancy Act and the Madras Estates Land Act, 1908 to declare and establish the rights of the cultivating tenants over their holdings. These legislations also claim to protect the interests of the zamindar in respect of recovering his rents by providing certain remedies. [1] Rent was made the first charge on the holding.

It may also be noted that the zamindar may have private lands [2] within his estate some times called the Domain, the home farm land, Kamatham, Khas, Sir, Pannai etc. The zamindar is the absolute owner having both the Kudivaram and Melvaram rights over them. Besides, he is the owner of all the forests, hills, rivers, tanks and tank-beds. The ryot has no occupancy rights in respect of any of them. The principle underlying the concept of occupancy rights is that the real owner of the cultivated land is the tiller of the soil and not the zamindar. The Melvaram right represents the rights of the soverign to which alone the zamindar is entitled. Under the Madras Estates Land Act, 1908, each tenant that was in possession of the ryoti land at the time of passing of the Act or sebsequently let into

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[1] M.E.L.A. Sc. 77-gives three remedies to the Landlord:— 1. to recover rent by suit before the Collector, 2. by destraint and sale of movable property, 3. by the sale of the ryot's holding. Movable property includes growing crops, produce of the land or trees on the defaulter's holding.

[2] M.E.L.A. Sc. 3 - (10) deals with Private land of the Zamindar.

it shall be given a patta[1] by the land-lord. Similarly, the land lord also is entitled to get the counter part called Mutchalika from the cultivating tenant. The relations between the zamindar and the tenant are determined by the terms of the said Patta and mutchalika (which are exchanged between the parties) which are strictly in conformity with the provisions of the Act. Another principle which is deduced from the above (principle) is that once a ryoti is always a ryoti land. It does not shread its characteristic features in spite of change of hands.

With in the area of the estate, there may be inam lands and service Tenures. The word 'inam' literally means a free gift. "Service tenures" are those grants of land burdened with service. Inams are classified into Minor and Major Inams. For a long time, only the major inams have been regarded as estates. The cases of grants of entire village or villages are called Major Inams. Grants of land less than a village are called Minor Inams. Now on account of legislation, the distinction between the Minor and Major Inams is wiped out. They are placed on a par with estate. Similarly, there is no distinction made, for purposes of treatment, between pre-settlement and post-settlement Inams. It is interesting to note the origin of the inam tenures. Generally speaking, they are traced to ancient rulers Hindu or Moslim. "The origin of the Inam tenure can be traced to grants made by Hindu Rulers for the support of temples, and charitable institutions, for the maintenance of holy and learned men and as rewards for public service etc. The practice was followed by the Mohmmedan rulers and by the British administrators until about a century ago."[2] Jagirs and Palayams have also been treated as estates.

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[1] M.E.L.A. :—See Sc. 50.

[2] From the statement of Objects and reasons to the Madras Estates Land Act Amendment Bill, 1931.

The Madras Estates land Act was first enacted in 1908. It appears almost "within a year of the coming into force of the said Act, defining the substantive rights of the land holders and the ryots, some defects came to light and an amendmending Act was passed in 1909. Since then, other defects and difficulties...were disclosed by numerous decisions of the High Court and Board of Revenue and other sources...A Bill proposed by the sub-committee reached the Government in 1928." [1] In the note appended to Sub-clause 2, they (Sub-Cnmmittee) said "it is considered undesirable to recognise anything less than a village as an estate and it is proposed to treat any land in an inam village the Kudivaram of which vests in the inamdar as his private land." [2] Again, under Clause 4, it says "A Full Bench of the Madras High Court has decided in I.L.R. 44 Madras 677, that a minor Darimilla inamdar is a land holder within the meaning of the Madras Estates Land Act contrary to the intention the Legislature. The explanation is added to get rid of the effect of the decision." Under section 9, it says that "tank bunds, the beds, and bunds have been included in Cl. (a) thereby removing them from the category of "Ryoti lands"..."It is considered desirable that legislation should respect custom in this matter and provide that no occupancy right should be annexed to lands that are "Lankas proper".

In 1931, another Bill No. XII was introduced in the legislature to bring about some changes in the law. In the report of the Select Committee,[3] we find interesting material. Under sub-clause 2 of Sc. 3, (Defn. of Inam Estate) "the Bill proposes that pre-settlement Inam village ...is an estate." But "the onus of proof of occupancy

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[1] From the Statement of Objects and reasons to Bill of the year 1931.

[2] Same as No. 1.

[3] Report of the Select Committee 1931.

rights in such an estate has now become fairly settled by the dicisions of the highest Courts and the amendment proposed had the effect of affecting such onus of proof. We consider that it is undesirable to make so important an alteration of law in this respect and have therefore decided to retain the existing sub-clause (d). We have however, delited from that Sub-clause the last words 'or any separated part of such village' as the policy of the Act is not to recognise anything less than a village as an estate." (Report of the Select Committee, 1931).

In the Minute of Dissent, Mr. P. Subbarayan seems to have stated "that the Bill does not effect the essential relations between land-holders and ryots and is not likely to satisfy either...I cannot reconcile myself dealing with lankas without reference to any of the accepted principles of law of accretions. One of the provisions of the Act which every land holder has been anxious to get amended is that preventing him from adding to the area of his private land and from cultivating even land purchased by him for a fair price as private land. This effectively prevents a zamindar from applying himself more actively than he is at present able to do to the pursuit of agriculture. In my opinion, it is detrimental to the economic interests of the country that a person who has got the capital to invest on agriculture and who is willing to do so should be compelled to remain as 'a mere receiver of rents' from cultivators...The Bill would have taken into eonsideration the grievances of the zamindar in realising his arrears. Far from doing so, the Bill has only increased the obstacles. There are numerous other defects in the Bill." [1]

We may note that His Excellency the Governor returning the Bill of 1934 for reconsideration by the legislative council observes thus:—"although notice of the principal amendments regarding the inamdars had been

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[1] Minute of dissent to the Report of the Select Committee, 1931.

before the council since 1933, I am satisfied that inamdars did not anticipate that those amendments would be incorporated in the Bill. In view of the complexities of the question involved, which in my opinion, required further consideration by the council, I think it should be considered in a separate Bill." [1]

Again, in reference to the Madras Estates Land Act (IIIrd Amendment) Act XVIII of '36 H. E. the Governor General withheld his assent to the same. In his notification, he says "I have reached the conclusion that *the Act is expropriatory*, in that it involves the loss of the Kudivaram of lands included in their inams by those inamdars who under the existing law would be in a position to establish their ownership of the Kudivaram, and that a measure producing this result with no provision for compensation of persons adversely affected should not be allowed to become law. I have been constrained to withhold my assent..." [2]

In Pages......Supra, we have quoted inextenso certain passages from authoritive sources. On a perusal of the above, certain inferences can be drawn such as the following :—

1. That the attempts on the part of the Legislature in respect of the law regarding the Zamindari Tenure can be said to be fairly unsuccessful and unsatisfactory as can be seen from the mere fact that so many amendments to the Act were found necessary and enacted from time to time.

2. That there are two schools of thought, so to say, one championing the cause of the Zamindary Ryot and the other anxiously trying to safeguard such of the just and legitimate interests of the Zamindar and the Inamdar as are noted in the relavent passages above.

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[1] Second Amendment Bill, '34.

[2] Third Amendment Act XVIII of '36.

3. The position of the Inamdar was sought to be reduced to that of the Zamindar. But the committees seem to uphold generally the interests of the Inamdars. At any rate, they propose to restrict the operation of the Act to major inams on a broad policy based upon considerations of equity and their antecedents.

4. There seems to be an agitation against the provision restricting the extension of the private land and cultivation thereof by the Zamindar.

5. That in regard to certain species of property differences of opinion seem to exist whether Lankas proper should be classified under the Ryoti land. The Committee seems to take the view that it should not be so classified.

6. In respect of lands with in the Inam, the legislature wanted to introduce certain provisions whereby the Kudivaram rights of the Inamdar are likely to be affected with out at the same time not providing for compensation. On account of the serious injustice resulting therefrom to the Inamdars His Excellency the Governor referred the Bill, on one occasion, to the Legislative Council for reconsideration. Again, on a different occasion, His Excellency the Governor General refused to give assent to the Bill passed by the Legislature. The policy of His Excellency the Governor and His Excellency the Governor General seem to be based upon the principle that legislation of an expropriatory nature should not be allowed to become law when especially it has failed to provide suitable compensation for the rights affected. This policy, it may be noted, is scrupulously adopted by all British Statesmen and administrators in pursuance of the Proclamation of The Queen Victoria (in 1858) which has been justly considered as the Charter of Indian rights and liberties.

Further Consideration of the Inams with in the Estates :—It can be seen from the definition of the term Estate in Section 3-(2) of the Madras Estates Land Act

(reproduced under foot Note to Page......above) that these Inams whether they are Minor or Major including the unsettled Palaiyams and Jagirs have all been subject to the operation of the said Act. It appears that the Act first confined its operation to the Major Inams. But later on, its scope was extended to Minor Inams also. Under Madras Act XVIII of 1936, material changes had been introduced in respect of the definition of the term Estate. Finally, the Madras Estates Land (Amendment) Act of 1944 was passed to further amend the definition providing a new Explanation as No. 1 and renumbering the existing explanations 1 and 2 as 2 and 3 respectively. The new Explanation reads thus: "Where a grant as an Inam is expressed to be of a named village, the area which forms the subject matter of the grant shall be deemed to be an estate not withstanding that it did not include certain lands in the village of that name which have already been granted on service tenure or been reserved for communal purposes or the like." This amendment was sought to be given retrospective operation from the year 1936 onwards from the date when the Madras Estates Land (third Amendment) Act 1936 for all intents and purposes. We have to note that the said Amendment seeks to get rid of a ruling of the Madras High Court which held that unless the grant was of a whole village or in cases where service Tenures *etc.* exist it will not be an estate within the meaning of the section. The effect of this amendment is therefore to regard even such Inam villages as estates.

The term Inam denotes land held entirely free of tax or on a favourable quit rent. It applies to Shothriums, Agraharams and whole Inam villages as also to parts of villages including small holdings. Such of the inams in the estate as were excluded from the assets on which the Peishkush was fixed at the time of the Permanent Settle-

ment were saved from the operation of the said Permanent Settlement. By Sc. 4 of the Regulation XXV of 1802, the reversionary rights of the Government were saved. These Inams were however transferred to the proprietor of the estate on payment of 2/3 of the assessment. On the basis of the rules made under Standing Order 65, these transfers had been effected.

The Madras Inams Act VIII of 1869 was passed with certain objects which had been set out in the Preamble itself. Section 1 says that nothing contained in the title deeds issued to the inam holders shall be deemed to define, limit or infringe the rights of any holders or occupiers of the lands from which any inam is derived or drawn. And nothing contained in Act IV of 1862 or Act IV of 1865 which are thereby repealed shall confer any right to land which he would not otherwise possess. It is clear, that Act IV of 1862 and Act IV of 1866 have dealt with Inam lands using certain expressions like 'Land' and 'Lands'. The Govt. wanted to clarify their position that they are not infringing the rights etc. of the holders over these lands if they otherwise have. This Act has got operation over the entire province excluding certain Scheduled Districts. It may be further noted that the Madras Enfranchised Inams Act IV of 1866 sought to exempt enfranchised village or other service inams whether under revenue or police departments from the operation of the Regulation VI of 1831. Service Conditions are disannexed and the Inams are placed on the same footing as other descriptions of landed property under enfranchisement by the Inam Commissioner.

The Madras Hereditory Village Officers Act (III) of 1895, seeks to repeal Regulation VI of 1831 for certain purposes and it governs all the Hereditory village Officers. The principles of hereditory succession are also retained. Salary system substituted the previous system of land assignments. The Madras Proprietory Estates' Village

Service Act (2) of 1894 was passed for the purpose of regulating the appointment, dismissal, punishment and remuneration of the village officers of the following classes by whatever name they may have been called:—1. The Village Accountants, 2. Heads of the villages, 3. Village watchmen or police officers. The Regulation XXIX of 1802 is repealed by the above Act. All village officers will be paid in lieu of their present emoluments fixed salaries from the fund called proprietory estates village service fund consisting of 1. the proceeds of the enfranchisement of Inam lands attached to such village officers, 2. of a cess to be levied 3. of any fines recovered under the Act. The present Act was intended to remedy the existing defects and to secure efficiency. The Preamble makes it clear and reads thus:—" Whereas it is expedient to amend the law relating to village officers in permanently settled estates in unsettled Palaiyams and in Inam villages and to make better provision for their appointment, and remuneration and for the prevention and summary punishment of misconduct or neglect of duty on their part, and generally for securing their efficiency; It is enacted as follows:" It may be noted that the Madras Act III of 1895 and Act II of 1894 are connected Acts one intended to apply to the Ryotwari area and the other to the Estate area with almost similar provisions.

In 1938, the Estates Land Act Committee headed by Hon'ble. Mr. T. Prakasam the then Finance Minister and at present the Premier presented its Report to the Legislative Assembly which contained the following passages:—

" The following are the *findings* and *recommendations* of the said committee. On the question whether the Zamindar or the Tenant is the proprietor of the soil, the Committee find *that the Tenant is the proprietor of the soil and the Zamindar has no right to it not even to possession of it* because he is only a *collector of revenue* within the meaning of Sc. 4 of the Estates land Act and under common law of the land.

The nature of the interest which the ryot has in his ryoti land *is a free hold right as in the case of ryotwari ryots, subject to the payment of land revenue (rent) to the land holder as the agent of the Government. His interest* in the soil *extends to the right to own it, sell it or even give it away to another, subject* to the liability to pay the *Land tax fixed permanently* at the time of the Permanent Settlement. *His interest is not derived from the land holder under a lease or contract.* He holds the land in his own right and deals with it as his own in the same manner in which *his ancestors enjoyed it before.* The Committee therefore recommend to the Legislatures to introduce a new Land Revenue Bill for Permanently settled estates declaring that the ryot is the owner of the soil and he is entitled to hold and enjoy *the full rights of ownership subject to the one condition viz.* that he is liable to pay the land revenue (rent) and also subject to all conditions and terms entered into between himself and his land holder at the time of the Permanent Settlement." [1].

The italicized portions of the above passage are significant and I propose to submit by way of clarification the possible impression of the words "As in the case of Ryotwari Ryots" may create in the minds of the readers· The reference to the ryotwari ryots only refers to the ryotwari pattadar and to none else though sometimes he may have leased out his land to tenants under a lease. This will be verified from the other expressions used by the learned Committee in the passage, such as, 1. agent of the Government, 2. Interest extends to the right to own it, 3. Sell it, 4. Give it away to another, and 5. deals with it as his own in the same manner as his ancestors enjoyed it before. I submit that these expressions and necessary inferences lead only to the ryotwari Pattadar.

There was a lot of opposition over the report when it was presented before the Houses. The Bill was however

[1] —Reproduced from the News Paper Report,

dropped from further consideration. During the present Ministry, another Bill The Madras Tenants Protection Bill 1946, was passed by the legislature. A few samples of criticism will bring the subject of zamindari tenure to a termination.

Mr. A. Rangaswamy Iyyengar says in his minute of Dissent that "The people of India have always been maintaining that the Permanent Settlement was a great wrong done to them...But the majority report, as I read it, seems to confirm and ratify the permanent settlement and impliedly to invite this Government also to set its seal of approval on the same...The only equitable method of settling a fair rent...is by adopting the principle of ryotwari settlement as in the Government areas, that is the principle of half net."

The Zamindar of Mirzapuram says "The interpretation placed by them (the Committee) on the Permanent Settlement is singularly novel and one that has not been suggested by any judge or administrator who had occassion to examine and interpret the settlement these 130 and odd years during which it had been there...There would be expropriation, without compensation and a clear conflict with, solumn engagements...Principles about fixation of fair rents have not even the merit of being capable of practical application. The data prescribed are either not available or where available can never be accurate."

Mr. W. K. M. Langley, speaking in the Assembly, seems to have said "The land got into the hands of the tenants who did not cultivate and finally the actual cultivator was the man who suffered. The state of things was unfortunately not confined to this province or to India. But that it did not justify proposals such as those put forward in the Committee's report...The simple process of dispossessing him and giving his land to some body else was not statesmanship but simply plain confiscation...The

one person who would get no benefit whatever out of the adjustment but on the other hand would straight away be worse of would be the agricultural labourer representing the great mass of the populace in this country. Inevitably, his wages would stay the same...even if higher prices for agricultural products were to continue...My main point however is that there was no permanent and unalterable settlement in 1802, as far as the ryots were concerned. This arbitrary 1802 settlement in favour of the ryot be dropped...Any way we have this Bill before us...It is a Bill to take away what belongs to cetain people at present and give it to some body else...in order to make a present of it...in this case the ryot. In other words, you are following the Moscow preceedent when the land was taken from the big land owners and given to kulaks. You are now proposing to create a large body of Kulaks... How long will it be before these ryot-Kulaks are themselves liquidated? They will sow the seed of dissension." This brings us to the Ryotwari Tenure.

CHAPTER III

THE RYOTWARI TENURE

Next in importance, perhaps, is the ryotwari Tenure.[1] These lands are interspersed in the whole of the Madras presidency particularly in the Circars, and here and there in the southern India. It will be seen that the Government is the owner of all the forest lands, waste lands, rivers, tanks, tankbeds and porambokes etc. In these the private citizen has no ownership rights.

In the words of an eminent author, "the Court of Directors learnt the imperfections of the Judicial and Revenue systems of Bengal. In making revenue settlements, before a final decision was reached, information about the nature of the land tenures was carefully collected.

[1] Note that it prevails in Bombay and Burmah besides Madras.

A periodisal was preferred to a permanent settlement and the ryotwari was more generally adopted than the Zamindari." Thus the Court of Directors authorised the introduction of Ryotwari tenure in Madras in their despatch dated 16th December, 1812. Under this system, "the state is brought into direct contact with the owner of the land and collects its revenue through its own servants without the intervention of an intermediate agent such as the zamindar or farmer and its object is the creation of peasant proprietors...The person with whom the government enter into direct engagement under the ryotwari system is called the Ryot. The word Ryot is a corruption of Arabic word 'Rayut' which literally signifies pasture or herd of cattle and was introduced into India after the Mohmedan conquest." That the ryotwari Pattadar is the real owner of the soil and is the ryot himself is clearly brought out even by Judicial decisions. "At the time of the introduction of the ryotwari system into this presidency settlements were entered into with the cultivating proprietor whom the Government found on the land and treated him as the proprietor thereof." The ryotwari proprietor being the owner of the soil, it was held in a series cases that he was entitled to carry on the cultivation of his lands in any manner he choses best and that any person who claimed a permanent or any other right in derogation of the proprietor's right must strictly establish it. Patta is evidence of possession. A registered Pattadar can alienate, sublet, mortgage, sell or bequeath or otherwise dispose of the whole or any portion of his holding.[1] The pattadar is liable to pay the assessment fixed on his land whether he cultivated it or not. Again it was held by the Board of Revenue that the ryotwari proprietor being the absolute owner of the soil, he can use it in any way he pleased. But if he works mines, he has to pay royalty

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[1] Standing Order 28, Sub-sc. 2, P. 106,

besides the usual assessment.[1] The govt. is entitled to regulate the distribution of the water from the irrigation source subject to the right of the pattadars to continue to receive the accustomed supply of water. From the foregoing, it will be clearly seen that the ryotwari pattadar is the ryot himself and his rights as such are recognised and maintained by law.

The ryotwari lands are also known as 'the Taraf lands', the 'Ayan' lands, 'Cirkar' lands, 'Koru' lands, or 'Government' lands. Under Regulation XXVI, of 1802, every land holder is entitled "to have his name registered in the public registers directed by that Regulation to be kept of landed property paying revenue to government and of transfers thereof from one proprietor to another..." We have to note that under the ryotwari system both wet and dry lands are held by the Pattadars for the variety of the land is never the criterion to determine the tenure. Under the Ryotwari system, we have two types of tenure, viz. The Inam tenure and the tenure under which Koru lands are held, each having its peculiar origin.

The Ryotri System resembles closely the Amani system which was prevalent in the Godavari District as in both cases, the settlement is made with the individual ryots. But there seems to be this difference between the two. In the case of the ryotwari system, the settlement is based upon the net proceeds; whereas in the case of the Amani system, it is based upon the gross produce. Besides, there were other systems in the Madras presidency like the Olungu and Motafysal systems prevalent in the Tinnevelli and Tanjore Districts, the Pat'hak system prevalent in Tanjore District, and the Veesabuddi system in the Ceded Districts and lastly the Kulwar system in other places. These systems have their own distinguishing features. After the

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[1] Standing Order 28 (7), P. 107.

introduction of the ryotwari system, these are only matters of academic interest.

The Ryotwari system involves division of all arable land, whether cultivated or waste, into several blocks each being assessed at a fixed rate for a term of years and collection of revenue from the occupants of these blocks. The Government assessment is based upon the Half net principle. From the above, we can see that the owner of the land is brought into direct contact with the Government.

The word inam literally means a gift. The vernacular name for it is Manyam. The term Inam is an Arabic word. The word inam or manyam denotes "land held either at low assessment or altogether free, in consideration of services done to the state or the community as in the case of village servants."[1] Wilson's Glossary gives the meaning of the term thus. "In India, and especially in the South, and among the Maharattas, the term (Inam) was especially applied to grants of land held rent free, and in hereditory and parpetual occupation..."[2] The term Inam came to be generally applied to all Government grants to denote grant in perpetuity not resumable.[3] As we have noted above, "the origin of the Inam tenure can be traced to the grants made by the Hindu rulers for the support of the temples and charitable institutions, for the maintenance of holy and learned men and as rewards for public service etc. This practice was followed by the Mohmmedan rulers and by the British administrators until about a century ago."[4]

Inams may be classified into 1. Public or private, 2. Individual or collective, 3. Religious or Secular, 4. For

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[1] Land Tenures By Soundararaja Iyyengar, P. 194.

[2] Wilson's Glossary, 217 P.

[3] 7 M.I.A. 128.

[4] From the Statement of Objects and reasons to Bill 1934.

past services or continuing services, according their nature, object and aim. But apart from these classifications, we have to consider what they are and how they are operating.

The frequent type of inams are those called '*Bhatavrithi*' Inams or as they are called Subsistence grants made to either individuals or families, for their maintenance, and for eternity, from generation to generation. Courts have held that Bhatavrithi inam means "an assignment of land or land revenue granted to brahmins at a low rent or rent free for their subsistence".[1] They are made to holy or learned pandits or to individuals for their services valuable and meritorious to the state.

Some times, the ancient rulers made grants of lands collectively such as for the community of brahmins of a particular locality when they are called *Agraharams*. "An Agraharam grant is a grant of village or part thereof made to a community of brahmins, held either rent free under grants or at a reduced rate of assessment usually held in shares."[2]

Shothrium is "a grant only to particular families". Shothrium "means literally an assignment of land revenue to a brahmin learned in the Vedas; but laterly, the term was applied to similar assignments to the servants of the Government, civil and military, Hindu or Mohmmedan as rewards for past services". Small Agraharams are also called *Khandrikas*.

Besides the inams referred to above, there are other inams granted to religious institutions like Temples, Mosques, Mutts etc. In all these cases, the grantee is the Idol or the

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[1] I.L.R. 16 Madras, P. 34.

[2] Wilson's Glossary.—2-A. Same as 2.—2-B. Wilson P. 490.

[3] I.L.R. 22 Bombay, P. 254, and I.L.R. 4 Mad. P. 200.

institution. Further, there are also grants made to individuals for rendering religious services in those institutions, such as Archakathvam Inams, and Swasthivachanam Inams. Corresponding to these, we have Muzavirs inams in reference to Mosques. For rendering other miscellaneous services in temples, we have other inams. So far as the Secular inams are concerned, we have to note that in the villages, to secure the needs of the villagers, certain grants have been made by the ancient rulers to individuals. These are generally, the Carpenters' inams, the Blacksmiths' inams, the washerman's inams and the like. Instead of salaries, village officers had been granted inams or assignments of lands from which they had to maintain themselves and render public services. These are the Karanam's Inam, the Village Munsiff's inam, the Vetty's inam etc.

Devadayam Inams:—The term Devadayam comprehends grants of land not only in favour of religious institutions such as temples and mutts but also those made to servants for performing the various services connected there with. Devadayam grants may consist either of whole villages or portions there of. Again, they may be assignments of land or renue there of. Grants in favour of temples are generally land assignments and are made for their maintenance. It was also the policy of the Government in 1863 to convert such of those grants of assignment of revenues (in favour of temples) to assignments of lands.

Dharmadayam grants are made to serve charitable purposes or public utilities comprising Inams such as those for Chathrams, waterpendals, topes, gardens, wells, ponds, bridges, schools, and other similiar institutions of public utility. Often, the trustee himself happens to be the servant for rendering the connected services. In the case of temples and mosques and mutts, they are granted to the idols or institutions themselves. Hence no trustee is allowed to claim interest in these grants excepting the Archakatvam

Inams and mosque service Inams. Devadayam grants were strictly non-resumable.

As early as 1817, the Government passed Regulation VII of that year which vested general superintendence of all endowments either of land or money in the Board of Revenue. This was passed with the object of preventing alienations by the Managers and trusties of the endowment properties. The above regulation was repealed so far as it concerns the relegious endowments by the Madras Religious Endowments Act XX of 1863. It may be noted that the powers of these trusties and managers are circumscribed within certain limits as those of a guardian of a minor's estate.

At present, so far as the grants to religious institutions (Devadayam grants) are concerned, they are governed by the provisions contained in the Madras Hindu Religious Endowments Act (II) of 1927, the preamble of which makes its objects and aims clear "Whereas it is expedient to provide for the better administration and governance of certain Hindu religious endowments described hereunder; It is hereby enacted as follows". Again, we have to note that instead of remunerating the village officers like the Karanam, Village Munsiff and the Vetti by Inams, the Government introduced the salary system. The Government allowed these village servants to enfranchise their Inam lands by paying the amount of assessment levied by the enfranchising authorities. Thereafter, these service inams became free holds with powers of heretability and transferability. We may also note that most of the villagc Officers in the revenue or police departments took advantage of the offer of the Government and got their lands enfranchised. Similarly, the other service tenures like those of village blacksmith, the village carpenter etc., have also been enfranchised on payment of assessment by these people. Similarly, the other inams also had been enfranchised and pattas were

granted. Here we have to note that at the time of the enfranchisement [1] of service inams relating to village officers, the Government enacted The Madras Hereditory Village Officers Act (III) of 1895, to regulate succession to the hereditory village offices, to provide for the appointments and control of the said village officers by whatever name they are called.

The Government passed in the year 1862 an enactment called The Madras Enfranchised Inams Act the preamble of which reads as follows.—"Where as under the Inam rules sanctioned by the Government under date 9th August, 1859, the reversionary rights of the Govt. are surrendered to the Inamdars, in consideration of an equivalent annual quit rent, and Inam lands are thus enfranchised, and placed in the same prosition as other descriptions of landed property, in regard to their future succession and transmission; It is hereby enacted as follows." The second Section deals with what amounts to proof of enfranchisement. We have to note that the Inam Commissioner, as per the rules made for the enafranchisement of inams, issued the Pattas using certain expressions like 'land' and 'lands.' The Government wanted to make their position clear in respect of occupiers on the land if any. This they did by passing another enactment called The Madras Inam Act, (VIII) of 1869 which says that nothing cantained in the title deeds issued to the Inam holders by the Inam Commissioner shall be deemed to define, limit or infringe the rights of any holders or occupiers of the lands. This enactment repealed Madras Acts IV of 1862 and that of 1866.

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[1] Enfranchisement consists in giving up the reversionary rights of the Crown in lands previously held on Inam tenure on payment of an annual Quit rent and converting them into ordinary and heritable and transferable property. Bhashyam Iyyengar, J. I. L. R. 26. Mad. 339. Rules for enfranchisement See the Board Standing order, II, P. 294-302.

Besides the grants referred to above, there are what are called Jagirs of military grants. The term literally means 'Place taken' It may have been granted for various purposes. But usually granted for military services. They may be conditional or free. At present, there is practically no difference between the Jagir and Inam. Both might be of land or land revenue and might have been granted for various purposes.[1]

There may be conditions in the grants referred to above showing the quantum of interest conveyed such as land or its revenue or either for life or certain lives, or for eternity. Subsistance grants are regarded perpetual and non resumable. Some times it may not be possible to predicate exactly the nature of the interest conveyed in which cases we have to depend upon how they are being enjoyed. Any restriction on alienation in an absolute agraharam, is in operative as being repugnant to the nature of the grant.

presumptions about Inams[2] :— Having considered the origin and the peculiar characteristics of the several types of Inams as they existed, let us know as to how the Courts of law treated them. Some old cases took the view that an Inam grant, prima facie conveyed only the Melvaram right of the grantor. The inamdar, if he claims the Kudivaram right also, he should prove that at the time of the grant, the grantor had that right as well. Similar presumption was also drawn in the case of grants by the zamindar. We have to note that these are only rebuttable presumptions and are drawn only in the absence of specific terms in the grant. Subsequent decisions, starting from the Privy Council ruling in Suryanarayana Vs. Potanna reported in I. L. R. 41 Madras, 1012 took a

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[1] I. L. R. 40 Madras, P. 889.

[2] Most of the matter in this para is borrowed and adapted from Soundararaja Iyengar's Land Tenures P. 194 to 197.

different view. The said decision holds that there can be no such presumption. Their Lordships based their conclusion upon the Regulation XXXI of 1802 in support of their views. The basis of their decision seems to be that the soil belongs to the soverign and from this their Lordships drew the conclusion that in the case of Inam grants, there was no presumption that the land revenue alone was granted. Again, in I. L. R. 43 Madras, Page 166, the learned Privy Council affirmed the above view and held that each case has to be decided on its own merits regard being had to the terms of the grant and the circumstances attending it. These two cases were understood to decide that in the case of Inam grants, the presumption was that the whole interest in the land Viz. the Kudivaram and the Melwaram passed to the grantee unless the contrary was shown—38, M. L. J. Page 342. Again in I. L. R. 44 Mad. 588, it was held, "that an Inam grant, primafacie conveyed to the grantee the entire interest in the land. The presumption is said to be stronger in the case of Minor Inams." This presumption was held applicable to post-settlement and service Inams also. "In order to rebut the presumption, the mere existence of tenants on the soil at the time of the grant is not suffice, but they must be tenants with rights of occupancy by custom or otherwise," I. L. R. 41 Madras, 1012. When the entire interest is vested in the soverign, he may grant the whole of it. It cannot be presumed that he intended to split the entire interest into two and granted one alone to the grantee, I. L. R. 36 Mad, 559.

From the foregoing, we can see that most of the Inams were enfanchised and converted into free holds. At present, the unenfranchised inams in the ryotwari area are only few and far between. The bulk of the inams under the former category may have swelled up the extent of another species of landed property called the Koru land. In consequence of the above conversion, the Inam lands

enjoy the same privileges as the Koru land and always changing from hand to hand.

Koru Lands:—Thus there is yet an another category of lands more extensive and valuable comprising wet and dry (lands) called the Koru or Patta lands. The origin of this species of property is not easy to trace. As we have noted above, that after the enfranchisement the extent of the Koru land has become augmented. Further, it will be seen that "at the time of the introduction of Ryotwari tenure in our presidency, settlements were entered into with the cultivating proprietor whom the Government found on the land and treated him as the proprietor thereof". Pattas were granted to them fixing the assessment on their holdings. It is also for this reason that these lands came to be called Patta lands. Since full assessment is imposed on them unlike those on which the favourable assessment or no assessment is imposed they formed entirely a separate species of land with absolute dominium in favour of the pattadar subject to one condition of paying the assessment to the Government. We may also note that even in respect of Inam lands the grantees will have Pattas which are called Inam-Pattas. Subsequent to enfranchisement the difference between the two is wiped out, and both are placed on the same footing.

It is enough for our present purposes to note that the lands referred to above correspond to free hold land of England with rights of heritability and transmissibility. And consequently, these lands formed a veritable piece of merchandice always having a great market value and ever changing from hand to hand. They became fit subjects of Court sales or private alienations. Generally, in the sale deeds, expressions of absolute right, title and interest conveyed are to be found. Besides, expressions regarding the rights in respect of the under-ground waters and minerals etc. are a regular feature in the Indian forms of

conveyancing. In Telugu, these are the expressions generally used in the sale deeds:—

పుత్ర పౌత్ర పార పర్యంతము, దానదమన వినిమయ విక్రయాధి సమస్త హక్కులతో షెడ్యూల్ దాఖలా ఆస్థియందు జల తరు పాషాణ నిధి నిక్షేపములతో సహా ఆచంద్రార్కస్థాయిగా, అనుభవించవలసినది.

to denote the absolute unconditional interest conveyed and the eternity thereof. It may also be remembered that these rights have been not only enjoyed by the owners as a matter of fact, but they are also strictly reeognised and enforced by the Courts of law. The policy of the Government also from the earliest times is to guarantee these rights of ownership of the individual citizan. In this connection I would like to make a mention of the Great Character of Indian Rights and Liberties viz. the famous Proclamation of the Queen Victoria addressed to the Princess, Chiefs and People of India in 1858. It runs thus "...Whereas, for diverse weighty reasons, we have resolved by and with the advice and consent of Lords Spiritual and, Temporal, and Commons in Parliament assembled, to take upon ourselves the Government of the territories in India, heretobefore administered in trust for us by the Hon'ble. East India Company.

"Now therefore, we do by these presents notify and declare that...We desire they as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government......

"We know, and respect, the feelings with which the natives of India regard the lands inherited by them from their ancestors, and who desire to protect them in all rights connected therewith subject to the equitable demands of the state; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India.......

"......In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And May God of all the power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people."

CHAPTER IV

GOVERNMENT QUESTIONNAIRE ANSWERS

Nature and Conditions under the Ryotwari Tenure:—Now we propose to answer the Government Questionnaire in the light of the foregoing matters. In the beginning, lands must have been cultivated by all the pattadars who were found so by the British Govt. either with the aid of their family members or with that of domestic servant, or with both. On account of a variety of causes, no doubt, many of these peasant proprietors must have left their villages and migrated to towns and cities either in search of employment or for other reasons rendering it either necessary or desirable to give their lands for leases to trustworthy tenants at a modest rental and on voluntary agreement either written or parole. Still, we find even in the year 1946 a number of these peasant proprietors cultivating their ancestral lands in the villages. We will also come across leases on sharing system called "Pali Cowls" under which the pattadar and the tenant jointly cultivate the lands and share the produce between them in a particular way, mostly half to half. Besides the above, the ryot-owners also cultivate their lands: and some times they also take the lands for lease from the absentee pattadar and either cultivate them personally or lease them to other landless tenants at a higher rental occupying the position of a middle-man-ryot. Thus, we have 1. Cultivating pattadars, 2. The Tenants under the leases, 3. Tenants actually cultivating the leased lands or sub-

tenants. 4. The actual tillers of the soil viz. the agricultural labourer or farm-servant. We may note, that generally speaking the ryots do not personally cultivate the lands but on the other hand, get their lands cultivated by hired labour or domestic labourer, for they have out-grown that stage.

Absence due to inevitable causes, is the potential cause of agricultural leases. The causes referred to are generally 1. The spread of literacy even to the remosest parts of the country and consequent search for employment and migration to towns and cities may render the leases either inevitable or conveniant. 2. In these days of universal literacy, parents feel it their duty to educate their children often in far of Towns making it inevitable for the family to migrate to towns. 3. The smallness of the extent of the land and the inadequacy of the agricultural income and consequent search for employment may lead to the same result. 4. Fragmentation of land due to law of succession and inheritance under the personal laws may also help the cause mentioned in clause 3 above. There may be similar forces at work producing the same result. But, neverthless, we have to see that there is a certain animous-revertendi on the part of these pattadars to return to their villages, take to cultivation and live amidst peace and plenty of the agricultural surroundings free from busy avocations in life.

Agricultural leases are generally given by registered instruments or unregistered ones and sometimes even on parole agreements called 'Mujimani.' The periods of these tenancies are generally five, ten, or even twelve years. Besides, rarely, there may be agricultural leases for one year only under oral agreements. The relations between the pattadar and the tenant are strictly governed by the terms and conditions incorporated in the leases themselves which are voluntarily agreed to by thc parties themselves and never opposed to any of the salutary provisions of law

of transfer of Property Act nor onorous to the tenants. There may be terms in the leases such as (1) prohibition against cultivation of injurious crops like the virginia tobacco, (2) construction of buildings on the leased land of a permanent or semi-permanent character such as indigo pits or tobacco barns etc., (3) prohibition against sub-letting, (4) destruction of ridges and such other acts of bad faith rendering the lease-hold interest terminable. (5) There may be stipulations for ensuring prompt payment of rents as and when they accrue. It will be seen that these conditions are intended for the preservation of the soil and the fertility thereof and never intended to be oppresive to the tenants.

It will be seen that the tenant takes the lands sometimes at grossly low rent from the absentee land-holder and cultivates virginia tobacco making enormous profits. Again we see cases of ryots tilling their leasehold land and letting them to others for raising tobacco crop at anything above Rs. 700/- for a piece of land of three acres in extent for that season. He won't even admit it to the pattadar much less pay anything extra to him beyond the stipulated amount. It is submitted that on account of such a cultivation the land gets spoiled in a short time however much the ryot may try to fertilise it. Never does the ryot-owner cultivate virginia tobacco on his own land. Then, is it unreasonable for the pattadar to restrict such a cultivation?—Similarly, the tenant, after taking the lease begins to construct indigo pits or tobacco barns on the leased land, rendering it impossible for others to come forward for such land.—On account of the absence of rack-renting in the villages, the tenant often dictates his own terms to the pattadar. Having taken the lease for grossly low amount, he will sub-let it to others mostly land less people at a higher rental coolly pocketing the difference for himself. It is for this reason that provision against sub-letting is resorted to.—So far as acts of bad faith are

concerned it may be submitted that they are matters of everyday occurrence in the villages. The neighbouring ryot-owner obtains the lease and immediately destroys the ridges making it impossible to the owner to know the extent of land liquidated. This will happen when the land is joint. Sometimes, the tenant also colludes with the neighbouring ryot-owner and conjointly contribute to the speedy liquidation of the holding. Again cases are not few, when the neighbouring ryot-owner takes the land ostensibly for cultivation and immediately diverts canals into the leased land to drain surplus rain water from his own land. Besides the above, to secure prompt payment of rents stipulations may also find a place in the leases.

Why should a land-holder think of changing his tenant ? In my view, the responsibility lies mostly on the tenant himself for one or more reasons stated above. In exceptional cases no doubt, it may also be due to the greed of the land-holder. But they are rare and exceptional. So long as the tenant remains reasonable, his interest is secure. In general, the condition of the cultivating tenants much better than even perhaps that of the non-cultivating pattadar. The reasons are not far to seek. (1) The Government tax generally is much less than the adjoining zamindari cist or rent. (2) Compared to the land available the cultivators are few (allowing a few reasonable acres per capita.) (3) There are better marketing facilities for his produce and therefore better prices for the same. (4) It is almost a universal feature for the ryots to take to cultivation of cash crops ignoring even the necessity of raising food crops. (5) The existence of cooperative credit societies, Land Mortgage Banks, Veterinary hospitals, Agricultural departments, Tobacco Growing Assn., and Marketing boards coupled with quick means of transport have all contributed, in no small measure to the betterment and prosperity of the cultivating tenant. Last but not the least, on account

of the recent World War and the war conditions subsisting for the last eight years or so, there has been an unprecedented windfall for the ryots in the shape of abnormal prices for the agricultural produce both in respect of food-grains and cash crops. The present ryot is not the old proverbial man half-naked and semi-starved being. But yet, there may not be lacking professional propagandists to paint pictures of the ryots to serve their own purpose to show that he is much neglected and the blame is assigned to the land-holder. An instance will make the point clear. It will be seen that a tenant cultivating a piece of land, say, three acres in extent, if it is dry, and one acre, if it is wet, can easily maintain his family with a reasonable standard of living throughout the year; whereas in the case of pattadar, what he gets as rents for similar extents will be hardly sufficient for a couple of months, of course for a reasonable living. From the foregoing, it will be seen that the condition of the cultivating tenant or middle-man ryots is fairly satisfactory and does not require so much agitation on their behalf.

The relationship generally subsisting between the land-holder and the tenant is, amicable and hormonious like that of a joint family. In the ryotwari areas, it may be noted the lands under the pattadars very from three acres to perhaps three thousand acres. In a majority of cases, people own small extents of properties. Is it appropriate to call even the small holder of land a land-lord? It may be further seen that holders of land below 100 acres are many and constitue the bulk of the middle-class peasant proprietors. A few only are the big land-lords who can be counted on the finger ends. Any legislation affecting their just interests will be a staggering blow to them.

So for as the rates of rent that are payable in the ryotwari area are concerned, they will depend upon various factors like the quality of the soil, the accessibility thereof, the pressure of demand, the availability of the land, the

prices of the agricultural produce and such other factors. Generally they tend to adjust themselves smoothly and harmoniously. As a matter of fact, the best land is supposed to be the black cotton soil on which all varieties of crops can be grown with the best advantage. It is also the most suitable one for raising virginia tobacco and such other cash crops which yield abundantly. Generally, for such a land, the best rent is secured, if the favourable factors referred to above also exist. If the lease were to be given now, there may be people offering about Rs. 60/- per acre per annum inclusive of Government tax. Other soils, which though not fit for raising such cash crops as stated above, but nevertthless, fertile for raising other crops fetch an annual rental of about Rs. 30/- per acre per annum inclusive of Government tax, provided favourable factors exist. The third category of land which is not so fertile as No. 2 above, may fetch an annual rental of Rs. 15/–to Rs 20/– per acre in the above way. The above figures depend upon, as we have stated above, on the existence of favourable circumstances which generally all lands will not have. If they are leases subsisting, the old rents only will be paid and the tenants will not pay even a pie above the stipulated amount in spite of the unprecedented rise in price level. So far as the wet land is concerned, it may be noted that on an average ten bags of paddy will be paid as rent per acre per annum, if the land is favourably circumstanced, inclusive of the Government tax which is much higher, say, four times above the tax on dry lands. It will be seen that the average yield will be about sixteen bags of paddy per acre. Besides, the tenant could raise other crops after harvesting paddy crops such as black and green grams which will yield him atleast two bags, each variety. Further, all the straw he will keep it for himself besides the vegetables grown on the land. The money value of the various agricnltural products is steadily mounting up. Therefore, we can get a fair estimate of the income of the cultivating ryot. More than what he pays to the landholder

he realises excluding the cost of cultivation which of course has risen a bit. Again, it may be seen that in many parts of the ryotwari area lands are not fertile. Most of them depend upon rains (rain-fed lands). They are not provided with water-supply from artificial scurces. There are also waste lands and pasture lands included in the holdings on which a flat rate of assessment is imposed which when compared to other assessments is high. The return value is almost negligible from them apart from their rental value. In such casses, only nominal rents could be collected from the tenants only just to induce the cultivation and improvement. The tenant no doubt has to toil hard, but he is amply rewarded by the low rents and long periods.

The pattadar, as far as possible, takes interest in his lands and cultivation thereof even under leases in his own interest. Atleast, he may be supervising them. In the case of leases under the sharing system, he takes direct interest in the land like the cultivator himself and does his best. One of the reasons for this type of leases is that instead of relying upon hired labour which is not always dependable either for faith or quantum of work, the pattadar ryot enters into a contract with another ryot agreeing to share the produce in a particular proportion, generally half-to-half or $\frac{1}{3}$ and $\frac{2}{3}$. Under this system, the pattadar and the ryot work jointly and share jointly the produce as partners. It may be noted that cist is paid by the pattadar himself, as in the case of other leases. Beyond the rent, no other payment is made by the tenant.

The existence of the terms like delivery of possession in as good a condition as when it was let out are, it is submitted, perfectly natural and proper against reckless and injurious cultivation especially when the land is black cotton soil.

So far as improvements and repairs are concerned, they are scrupulously carried out by the pattadar himself at his

own expense and the tenant will not move even his little finger in those directions, however rich he may be; for, his interest in the land is temporary. His only concern is to extract as much as possible from the land and leave it to the pattadar at the end of the period. Repairs to land are necessary against erosion which if neglected will result in further deterioration of the land. Therefore, it is concern of the pattadar to take up such works and he does them.

The question of leaving any part of the land will not generally arise as no tenant will keep any part of the land vacant without putting it to some use or other and deriving benefit therefrom. When, on account of channels, the entire land is threatened, generally such part or parts will be left as pasture land and allowed bable trees to grow on them so as to prevent water action from affecting the adjoining land. In such cases, repairs would be most impracticable. Sometimes, we may also see that pattadars adjoining a big channel investing their funds in proportion to their interests in the land and undertaking construction of enbankments or rivetments to check the devastating effects of the water.

It is not true that the ryotwari pattadar is a mere "rent-receiving-sinecurist". As we have already seen above, the pattadar himself is the ryot and true owner of his soil who was found so in actual occupation of the property at the time of the introduction of ryotwari settlement. How can we say that such a man or his transferees for valuable considerations (including legal representatives) are mere sinecurists having no interest in the land? No doubt, on account of temporary inconvenience, he has leased out the land to others under the existing law. But undoutedly at any rate, in a majority of cases, he may have the animus revertendi to come back of his land when he please and when the circumstances permit him. Does a temporary lease involve transfer of rights for ever? It is beyond doubt that most of these people have parted with valuable

consideration for the purchase of the lands from the pattadars. It is equally certain that a majority of them came into possession of these lands by devolution of law as heirs of the pattadars and have many long years of peaceful enjoyment and possession of their holdings. In the case of the former category of owners, we can see that like most other people investing in company shares or on house properties, they may have invested all their liquid assets on the lands. We are unable to understand why the treatment is proposed to be given to these unfortunate landowners. We also fail to see how he can be called a mere sinecurist and a rent receiving person. The critics forget that at some time or other they or their predecessors in interest may have cultivated the lands. In the case of Inams, the critics conveniently forget that these grantees might have rendered valuable and meritorious services to the state in recognition of which, the ancient rulers Hindu or Moslim granted them lands for their maintenance. The proposed legislation amounts to undoing what is done by those rulers. Suppose, for instance, the Present Labour Government promised India, as it has done, self Government absolutely and unconditionally. Will it be open to the incoming Government to say that they are not bound to honour those promises?

It may also be submitted that during the times of drought, remissions are also allowed either partly or wholly according to the circumstances. Rents may be postponed to the succeeding year not withstanding any contract to contrary. The benefits and burdens are spread over long periods of tenancy which will enable them to live peacefully and free from uncertainties.

It will be kindly noted that tenants as a class are much better of than even perhaps a majority of these pattadars. I would invite the attention of the critics to the number of purchases that the poor tenants have made and are making still for the last six year or so, even at fancy prices. Statistics

from the registration offices will prove conclusively the statement made above. I am aptly reminded of a statement that figures do not lie but men do. A few instances will make the point clear. For a land fetching about Rs. 1000/- as market value previously, the tenant will not hesitate to pay Rs. 6000/- or even more for he is sure he can make it up within three years at the most. Again, I know another instance where for a piece of three acres of dry land, fabulous sum of Rs. 14000/- was offered and conveyance completed. Similar instances are not few and far between to escape attention. Money is very cheap for them; cheaply got and easily spent. We can see for ourselves how these people live in villages. It will only show how usually the penpictures customarily drawn about the musch neglected toiling ryot are only far from the realities of life.

Fair rents if they are to be fixed at all are to be fixed on the basis of the current money value of the agricultural produce less cultivation expenses and not upon the Government Sisth.

The economie doctrine of 'Laissez Faire' or let alone is a whole some doctrine which has found favour in many western Countries including England. "The best exponent of this principle is John Stuart Mill in his celebrated treatise entitled "Liberty." The name of Adam Smith in particular gave it great effect, supported also as it was by Ricardo Bastiat and Malthus. The effect in England was soon felt by the repeal of a long standing laws all of which were anti-individualistic."[1] The celebrated author Mr. R. N. Gilchrist, says that "the essence of ethical argument is that the end of the man being the harmonious development of all his powers, each individual must have the freest possible scope for the realisation of this end. A form of society in which every individual can compete

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[1] Gilchrist's P. 399 and 400. "Principles of political Science

freely with every one else leads to the best results. If Government interfers beyond a certain minimum the individual is cramped...Government interference kills self reliance...Onee the Government begins to interfere, individual is tempted to be lazy. If without let or hindrance by Government he is allowed to do so, society as a whole will benefit." [1] Thus the theory and views on the individualist Society is understood. Free competitive society based upon this principle is proved to be much stronger than a state controlled one where premium will be placed upon idleness and lethergy. So in a healthy society, if people are left alone, they will tend to be more active pains taking and efficient. The individual tries to compete with his neighbour and thus produce more and more and of a better quality. We have to note that this principle of Laissez faire has not received complete application in India with the result that our country is terribly backward.

At present, land is locked up in the hands of a few individual ryots in the villages, whether it is their own or leasehold interest. They will never cultivate these lands personally. On the other hand, they engage hired labour or sublet some of them at higher rental to others for profit. Thus he occupies the position of a middle man. By transferring rights from the Pattadar to the middle man ryot, how is the country benefited? Surely, It does not benefit the labourer nor the sub-tenant. But it only benefits the middleman ryot. If by legislation, agricultural prosperity is aimed at, it is not by transferring rights from one section of the people to another. On the other hand, large-scale-farming with the aid of scientific machinery, adoption of rationalised methods on the co-operative basis will only solve the agricultural problem without disturbing the rights of the individuals.

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[1] Gil Christ's P. 399 and 400. "Principles of political Science.

It may also be noted that the proposed legislation is superfluous and I fear, only tends to create a gulf between the land holder and the tenant on the one hand and the tenant and the actual tiller on the other. So far as fixity of tenure is concerned, it is always assured for the reasonable tenant who offers a fair and reasonable portion of the produce (in money value) and who does not commit acts of bad faith. Thus, we find in the ryotwari area, numerous instances of tenants continuing in possn, of lands for years together. Evictions are only exceptional and far out of the way. Therefore, by contemplating legislation with the avowed object of regulating the dealings and relations between the otherwise amicable parties will only foment litigation instead of solving the problem. It is some thing like creating a decease and trying to invent remedies to cure it later. Statutory regulation may not after all solve the problem. For are we not seeing how these Controls work in day-to-day life? Good conduct and fair dealings are only the sure guarantees for good social relations instead of arbitrary law from which we suffer too much. I may also submit that the ryot is not standing in need of any legislation unless it is to usurp the rights of the pattadar. The working of the Co-operative societies and Land Mortgage Banks will reveal that ryot-applicants are practically nil for the last six years or so. There is a sudden drop in rent litigation in Courts of Law. Pro-note litigation is practically not existing. The reason is not far to seek.

About Cultivation Expenses :—They vary from place to place and depend upon many circumstances, like, 1. The quality of the soil, 2. Variety of the land, whether it is dry or wet, 3. The supply of labour, 4. The capacity of the ryot to pay, 5. Whether it is intencive or superficial cultivation, 6. Cost of living, & 7. Level of prices for agricultural produce. Therefore, it is not always easy to correctly estimate the actual cost of cultivation. "It is extremely difficult to estimate a ryot's expenditure in the

cultivation of land of different qualities. It is obvious that as a general rule, less money or trouble is spent on the cultivation of poor than of good land; It is impossible to frame a scale of charges which is more than aproximately correct." [1]

Agricultural wages are generally paid partly in cash and partly in kind. The costs of wet land cultivation is much lower than that of the dry land. The former is less expencive and less difficult. There may be work for 5 to 6 months for dry cultivation and 3 months for wet cultivation. During the off-season, when they have no field work, they usefully employ it for spinning or other home crafts. There cannot be two opinions that the condition of the agricultural labourer is far from satisfactory. His wages does not rise in proportion to the cost of living or the market value of the agricultural produce.

Fragmentation of holdings in India have became a normal feature and is generally due to the laws of inheritance and succession under the personal laws of the Hindus, Mohmmedans and Christians, leading to division of holdings. Economic necessity such as discharging debts, providing for the education or performing marriages etc., may also lead to liquidation of holdings as the necessity arises. Besides the above, the proposed amendment to the Hindu Womens right to Property Act, 1937 may also promote the Same result. One of the evils of fragmentation is, perhaps, that it is a stubling block to large scale farming. The most effective solution is suitable amendments and codification of Hindu and Mohemmedan Laws and suitable amendment of the Indian Succession Act. Even without undertaking such wholesale revision of the laws, it is nevertheless possible to introduce large scale farming by co-operative schemes to secure maximum production. Labour legislation may also

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[1] From the Book 'Land Revenue Policy of the Indian Govt. Page 55, 56.

be undertaken to regulate hours and wages for different kinds of labour.

In or about 1900, Mr. R. C. Dutt, C. I. E. formerly Acting Commissioner of Burdwan, wrote a series of letters addressed to The Governor General wherein he appears to have severely criticised the Land Revenue policy of the Government of India and suggested certain recommendations, in pursuance of which an enquiry was instituted by the Government The Governor General in Council passed a resolution dated 16–1–1902 about the principles on which revenue administration was to be based, the concluding part of which reads thus, "Historically it (Revenue policy) owes its immediate origin to practices inherited from the most decadent period of native rule and its form to changes made slowly...and by slow degrees, assimilate the requirments or enter into feelings of the people. Where habit and precedent count more than wisdom, there has been need for caution in reform; and logical completeness or simplicity could not be expected of a system born amid such surroundings, applied to such manifold conditions and to so heterogeneous a population, and subject, in various stages of its development, to considerations of practical expediency rather than of abstract symmetry or scientific perfection." A part of the weakness of the criticisms which have been directed against it, arises from the erroneous assumption that it can be regulated by fixed laws or shaped by arthmetical standards...He (Governor General) believes that the existing system, if pursued upon the lines that have been indicated (such as enhancement of revenue to depend upon cost of agricultural produce etc.) is both well suited to the present conditions of the country. and compatible with its future development."[1] We have to note that Mr. R. C. Dutt championed the cause of the ryotwari ryot

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[1] 'Land Revenue Policy of the Indian Government' Gevernment Publication Pages, 47, 48 and 64.

pattadar against the periodical revision of land assessment, and pleaded for permanent assessment. "That by early Ryotwari settlement the Madras ryot had a declared and indefeasible right to an unalterable and perpetual assessment."

A few points against contemplated legislation :—

1. The ryotwari Paitadar is the absolute owner over his holding from every sense of the term. He is the ryot himself. His valuable rights are either purchased by him or devolved upon him by virtue of law. He has all the essential attributes of ownership in him, viz. Possession, Interest and Title.

2. It will be seen that in the Ryotwari area the tenant has no manner of interest apart from his lease and the stipulated period. Legislation cannot be introduced to the prejudice of the pattadar who may have entered into contract of lease on the faith of the existing laws.

3. The analogy of land lord under the Zamindari Tenure and the application of those principles to the Ryotwari pattadar (who is the real peasant proprietor of the soil) and to the ryotwari tenure is neither warranted by established law nor antecedents. The learned professor [1] his report on 'Rural Indebtedness' proposes' a less radical method' for the ryotwari lands. He recommends that leasing should be made unattractive by statutorily fixing the share of the tenant at a higher level and levying a sur-tax on the leased lands. He admits that the standard of life of the agricultural labourer has risen slightly during recent times. He proposes to fix the wages at 2¼ times (225%) over that of the prewar level. The effect of his proposals would be to reduce the existing rents in the ryotwari area in spite of the unprecedented rise in the price level. It will be seen that in the case of the zamindar, the learned professor pleaded vehemently for a share in the windfall of prices on behalf of the zamindar in 1939 in the Madras Legislative council;

[1] Dr. B. V. Narayanaswamy Naidu.

Whereas in the case of the Pattadar he wants that the leasing should be unattractive, rents should be statutorily fixed and even a sur tax also to be levied. This furnishes an instance of adding insult to injury. We fail to see what prevents him from upholding the cause of the ryotwari pattadar also on the same considerations. So far as his proposals to create economic holdings are concerned it may be submitted that they are nothing short of expropriation so far as the small scale land owners are concerned, for it leads to compulsory liquidation. It will be remembered that the bulk of the ryotwari pattadars are small land owners. It is possible to secure maximum production without interfering with rights of ownership by having recource to co-operative farming.

4. It will also be seen that there is no present necessity to improve the conditions of the ryotwari tenancy either regarding rates of rent or fixity of tenure under the present circumstances. Nor is it desirable to regulate the above by means of legislation which undoubtedly interferes with the interests of the pattadar ryots. It will only tend to straighten the otherwise smooth and harmonious relations subsisting between them.

5. The terms and conditions of the leases forming the basis of their tenure are neither onorous nor oppressive to the tenants. Neither are they opposed to any of the salutary provisions of the Transfer of Property Act, nor against the recognised public policy. Hence, there is no justification to deprive them of their valuable rights by proposing a dangerous piece of legislation.

6. Immemorial rights and interests should not be disturbed. It is neither statesmanlike nor equitable to contemplate such a legislation without assuring the interests of the Country or providing the equitable compensation on the basis of the present market value.

7. If the existence of the private ownership is a hindrance to social progress, I fail to see how it is going to achieve by transferring rights from one section of the people to another. Again, where is the end to such a policy? In this connection the observations of a responsible Govt. Official Sir Joseph Clay[1]. deserves consideration. He seems to have stated that "Communism is a creed that cannot possibly appeal either to the Hindus or Moslims. Love of Property, even though it be a small piece of land is deeply ingrained in the Indian people. Also there is the religious aspect; Nothing can eradicate the sense of religion in the Indian. Communism is opposed therefore, to two fundamental deep bred instincts of the Indian People and cannot get a foot hold in India for that reason."

8. It will be noted that in a majority of cases, the tenants will not themselves personally cultivate their holdings for they sublet them to others at a higher rental occupying the position of a middleman. Even in regard to his own lands, the wealthy ryot does not personally cultivate them, for he hires the labour for the purpose. What difference does it make if it is the Pattadar? The proposed legislation unduely favours one class of people to another bringing in mutual discard and discontentment.

9. The agricultural problem in India is a triangular one and not two-sided as is very often mistaken. The essential parties are, 1. The ryot pattadar, 2. The lease hold ryot, or his sub-tenant, & 3. the actual tiller of the soil whether he is the domestic servant or hired labourer. Therefore, how does the proposed legislation seek to solve the problem without bringing in chaos and confusion?

10. The absentee land-lordism which is not particularly confined to India alone, is due to a variety of causes, (some

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1. Sir Joseph Clay, former Finance Member, U. P. Press interview, Published on 13-4-1937, in M. Mail.

of which are only temporary). It should not be penalised by a measure seeking to transfer rights from one section of the people to another and not even to the State.

11. It will be seen that the term land lord does not strictly apply to most of the pattadars as they are small scale proprietors below 100 acres of land. If no distinction is made for purposes of treatment of any legislation, it will only lead to the total annihilation of the middleclass pattadars.

12. A clear unequivocal opportunity should be given to the absentee pattadars to take possession of their holdings within a specified period, say one year, and ask them to cultivate them making it obligatory on the part of the tenants to surrender the holdings notwithstanding any contract subsisting. If the pattadar fails to cultive them, then only legislation should be contemplated.

13. Otherwise the proposed legislation, will be communistic in spirit and letter. Under the garb of agrarian reforms, legislation of this type should not be contemplated, by which I fear the distinction between the Congress and Communist Parties will be wiped out. Any proposals of this type are bound to be at variance with the Congress Manifesto and its policy.

14. Critics very often forget that these Inamdars might have rendered invaluable services to the State in recognition of which these Inams had been granted to them by the ancient Rulers.

15. It is further submitted that the Agricultural problem is an All-India—Question without reference to other provinces the proposed legislation may lead to needless complications and unrest.

The rationale if any, behind the principle of occupancy rights or any other permanent rights is the long and continuous possession and enjoyment of the land with

certain other qualifications as mentioned in the passage of the report of Estates land Act Committee quoted in page, 21 above. If that were so, we have to submit that in the case of the ryotwari tenant, there is neither length of possession nor continuous enjoyment of the land in such a way as to deserve permanent rights. On the other hand, the tests contained in the said passage justly entitle the pattadar to be allowed to enjoy these rights and privileges which his fore fathers did really enjoy from generations. Therefore, we fail to see why or how these rights could be transported to the ryotwari areas. It will also be seen that the ryot is only a nominal tenant, the actual cultivator being in some cases the sub-tenant. Further, there is the actual tiller of the soil the farm-servant or the hired labourer. How are we going to solve the problem of the labourer who is invariably the person responsible for the cultivation? He is the real tiller of the soil. Therefore, his claims to a share of the produce will be, atleast, as equitable as those of the nominal ryots. How does the legislation propose to distribute the produce equitably among the 1. Pattadar, 2. The tenant under the lease, 3. The sub-tenant, 4. The farm-servant or hired labourer, and 5. The state?

16. If instead of contemplating legislation of the type referred to above, is it not infinitely better that the Government should take up all culturable waste lands in the Province which according to Hon'ble Mr. V. V. Giri the present Minister for Labour and Industries in the Government of Madras, comes to 13,164,111 acres and according to his suggestion establish state farms Or encourage colonisation of land-less people without disturbing the settled and established rights of pattadars? I propose to give below the statistical information given by Hon'ble Mr. V. V. Giri.

If the contemplated legislation however materialises and proposes to confer permanent rights on the Ryotwari Tenants, it only amounts to a moral wrong, ethically

unsound, legally Indefencible, politically a blunder and economically ruinous, and I fear, surely leads to a class-war with bitter consequences. It is hoped that the proposals will be dropped in the interests of peace, tranquility and good governance.

Hon'ble Mr. V. V. Giri, gives the following figures in his presidential speech published in the Madras Mail, on 21-5-'37.

CULTURABLE WASTE LANDS

	Names of the Provinces		*Acres*
1.	Ajmer - Merwara	...	303,642
2.	Assam	...	19,527,781
3.	Bengal	...	5,915,644
4.	Bihar & Orissa	...	6,999,999
5.	Bombay	...	7,108,016
6.	Central Provinces	...	14,077,297
7.	Delhi	...	63,093
8.	N. W. F. P.	...	2,764,037
9.	Madras	...	13,164,111
10.	Punjab	...	14,716,694
11.	United Provinces	...	10,573,860
		Total Acrage	94,854,174

Note :—Waste lands in Burma and Coorg are omitted.

APPENDIX I

TEXT OF THE QUESTIONNAIRE

The following it is learnt, is the full text of the questionnaire; Existing conditions of tenancy in ryotwary areas; Nature of the tenancy:—Please give an account of the nature of the agreements usual between the tenant and the amount of rents paid for different classes of land, conditions of tenantcy;—Full information may be given about the sorts of agreements that|are concluded between the pattadar and the tenant and also the amount of the rents and what extras, such as straw, vegetables, etc., are paid in addition to grain or cash rents. If the land-lord and tenant share the produce, explain how the kist and costs of cultivation are shared and whether the tenant has all the straw; and endeavour to calculate the actual value of the share of produce obtained by either party.—Any special conditions in the lease may be noted such as 1. Is any restriction imposed on the crops to be raised? 2. Are there stipulations against sub-letting? 3. Is there any condition to restore the land in a proper condition and to remove the nuth and other grasses? (This condition is generally stipulated in Karnool and Bellari Districts and in other Black cotton areas) or to remove prickly pear, etc. (Coimbatore and other districts).—Does the land lord take interest in the cultivation of the lands? Does he supervise the cultivation? Does he advance money to the tenant for buying seeds or manures? What are the terms on which such advances are given? Does the land lord contribute money for any improvement of the land or for the purchase of cattle, etc.? Is he merely "a rent receiving sinecurist"?—To what extent lands in holding are kept vacant without being cultivated to the fullest extent? How far is such non cultivation due to disputes between land lords and tenants? To what extent does absentee land lordism exist?—Is the tenant spending any money on the improvement of the land? Is he able to

recover adequate compensation for it at the time of eviction? What are the usual terms in leases regarding improvements ? —What, if any, are the effects of the present tenancy systems on cultivation of land ? Does it conduce to good and proper forming by the tenants ? 1. Is the share now secured to the tenant fair and reasonable ? What is the margin of profit or loss left to him, after meeting the cost of cultivation and the charge on supervision ? 2. Is the rent regularly paid ? Or is it allowed to accumalate ? Is interest charged on the arrears ? And if so at what rate ? 3. During years of total or partial failure of crops, is any remission in the rent allowed by the land lord to the tenant ? if no remission is allowed, in such cases, how does the tenant manage to pay the rent ? Is it by contracting debts or selling any of his properties ? 4. Are suits filed in the civil courts for recovery of arrears of rent ? If the existing rent is not reasonable, is it not necessary to have the fair rent fixed and this by legislation ?—Is the fair rent to be fixed with reference to the existing land asessment on the land, or with reference to the produce on the land ? if it is to be the former, in what proportion, should it be fixed for (*a*) wet lands (cultivating food crops), (*b*) ordinary dry lands and (*c*) money or commercial crops such as sugar cane, plantain; turmaric, cotton, groundnut, etc.? If it is to be latter, whether the rent has to be fixed with reference to the gross produce or net produce and at what proportion, it should be fixed ?—Tenure of tenancy :—Period of tenancy in geneneral—Are the leases generally renewed or are there frequent changes in the tenants ? Is eviction of tenants common and frequent ? if so for what reason ? If the tenure is uncertain, is it not desirable to secure fixity of tenure by legislation.—Are not the tenants cultivating sufficient extent of land to secure them a living ? Are they generally in debt ? if so on what account ? Is there any difficulty in getting tenants ? If so, for what reasons ? Costs of Cultivation :—Please give estimates of the costs of cultivation and gross outputs of as many important

crops as possible and on different kinds of lands, stating the source from which you get your information. Note :— Please give definite data on preparation of soil, cost of ploughing (number of ploughings), seeds, manures, and labour on different operations. (Cost of cattle, maintenance, etc. hours of labour worked, if one's own were used.) Wages and Employment :—1. Customary rates of wages, (*a*) in money, (*b*) in kind. Please note what extra perquisites are given to the labourer in additlon to his regular wage. 2. days and hours of employment available for (*a*) the pattadar, (*b*) the tenant, (*c*) the labourer, on different kinds of farms and on different sizes of holdings. Fragmantation of Holdings :—With a view to preventing excessive fragmentation of holdings which reduces the productivity of lands, would you prefer (*a*) legislation to change the law of inheritance and succession (*b*) delimitation of uurestricted right to transfer by compelling right of pre-emption to co-sharers on equitable principles and or (*c*) Compulsory consolidation and redistribution of holdings by means of co-operative societies ? Please furnish the particulars about the selling prices of land. How far is the transfer of land common ? What is the number of such transfers for a few years ? What are the common causes of transfer ?

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